

1-1 By: Zaffirini, Garcia S.B. No. 543
 1-2 (In the Senate - Filed February 11, 2015; February 18, 2015,
 1-3 read first time and referred to Committee on Business and Commerce;
 1-4 April 1, 2015, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 7, Nays 0; April 1, 2015,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10			X	
1-11			X	
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 543 By: Eltife

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to certain requirements applicable to contracts entered
 1-22 into by, and the contract management process of, state agencies.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 2102.005, Government Code, is amended to
 1-25 read as follows:

1-26 Sec. 2102.005. INTERNAL AUDITING REQUIRED. A state agency
 1-27 shall conduct a program of internal auditing that includes:

1-28 (1) an annual audit plan that is prepared using risk
 1-29 assessment techniques and that identifies the individual audits to
 1-30 be conducted during the year, including an annual audit of the
 1-31 agency's contracts; and

1-32 (2) periodic audits of the agency's major systems and
 1-33 controls, including:

- 1-34 (A) accounting systems and controls;
- 1-35 (B) administrative systems and controls; and
- 1-36 (C) electronic data processing systems and
- 1-37 controls.

1-38 SECTION 2. Section 2113.102(a), Government Code, is amended
 1-39 to read as follows:

1-40 (a) A state agency may not use appropriated money to
 1-41 contract with a person to audit ~~[the financial records or accounts~~
 1-42 ~~of]~~ the agency except:

1-43 (1) as provided by ~~[+]~~
 1-44 ~~[(1)]~~ Subsections (b), (c), and (d); and

1-45 (2) in accordance with Section 321.020 ~~[Chapter 466,~~
 1-46 ~~pertaining to the state lottery,~~

1-47 ~~[(3) Chapter 2306, pertaining to the Texas Department~~
 1-48 ~~of Housing and Community Affairs, and~~

1-49 ~~[(4) Chapter 361, Transportation Code, pertaining to~~
 1-50 ~~the Texas Turnpike Authority division of the Texas Department of~~
 1-51 ~~Transportation].~~

1-52 SECTION 3. Section 2162.103(a), Government Code, is amended
 1-53 to read as follows:

1-54 (a) In comparing the cost of providing a service, the
 1-55 council shall consider the:

1-56 (1) cost of supervising the work of a private
 1-57 contractor; ~~and]~~

1-58 (2) cost of a state agency's performance of the
 1-59 service, including:

- 1-60 (A) the costs of the comptroller, attorney

2-1 general, and other support agencies; and
 2-2 (B) other indirect costs related to the agency's
 2-3 performance of the service;
 2-4 (3) installation costs and any other initial costs
 2-5 associated with a contract with a private contractor;
 2-6 (4) other costs associated with the transition to
 2-7 using a private contractor's goods or services; and
 2-8 (5) cost savings to the state if a private contractor
 2-9 were awarded the contract.

2-10 SECTION 4. Section 2261.002, Government Code, is amended
 2-11 read as follows:

2-12 Sec. 2261.002. DEFINITIONS. In this chapter:

2-13 (1) "Contract" includes an agreement or other written
 2-14 expression of terms of agreement, including an amendment, a
 2-15 modification, a renewal, or an extension, for the purchase or sale
 2-16 of goods or services that is entered into or paid for, wholly or
 2-17 partly, by a state agency during a fiscal year and a grant, other
 2-18 than a grant made to a school district or a grant made for other
 2-19 academic purposes, under which the recipient of the grant is
 2-20 required to perform a specific act or service, supply a specific
 2-21 type of product, or both.

2-22 (2) "Contract deliverable" means a unit or increment
 2-23 of work required by a contract, including goods, services, reports,
 2-24 or documents.

2-25 (3) "Contract manager" means a person who:
 2-26 (A) is employed by a state agency; and
 2-27 (B) has significant contract management duties
 2-28 for the state agency.

2-29 (4) "Executive director" means the administrative
 2-30 head of a state agency.

2-31 (5) "General counsel" means the general counsel of a
 2-32 state agency.

2-33 (6) "Major contract" means a contract, including a
 2-34 renewal of a contract, that has a value of at least \$1 million. The
 2-35 term includes a service contract.

2-36 (7) "State agency" has the meaning assigned by Section
 2-37 2151.002.

2-38 SECTION 5. Subchapter A, Chapter 2261, Government Code, is
 2-39 amended by adding Sections 2261.004, 2261.005, 2261.006, and
 2-40 2261.007 to read as follows:

2-41 Sec. 2261.004. STATE AGENCY REPOSITORY AND RECORDS.

2-42 (a) Each state agency shall maintain in a central location all
 2-43 contracts for that agency.

2-44 (b) Each state agency shall maintain a comprehensive list of
 2-45 all contracts for that agency.

2-46 (c) In this subsection, "contract" includes a sole-source
 2-47 contract. Each state agency shall maintain accurate records of all
 2-48 essential information relating to agency contracts, including
 2-49 information on:

2-50 (1) a contract delay or changes to a contract in which
 2-51 total expenditures under the contract increase by more than 35
 2-52 percent from the original contract amount; and

2-53 (2) cost overruns, including a written explanation of
 2-54 why expenditures have increased under a contract.

2-55 (d) Notwithstanding Section 441.185, contracts and other
 2-56 related information required to be maintained under this section by
 2-57 a state agency must be retained for the duration of the contract.

2-58 Sec. 2261.005. CONTRACT REPORTING. (a) In this section,
 2-59 "contract" includes a construction contract.

2-60 (b) The following sections prescribe reporting requirements
 2-61 for certain contracts:

2-62 (1) Section 322.020;

2-63 (2) Section 2054.008;

2-64 (3) Section 2166.2551;

2-65 (4) Section 2254.006; and

2-66 (5) Section 2254.0301.

2-67 Sec. 2261.006. PROFESSIONAL SERVICES. A state agency shall
 2-68 procure professional services in accordance with Subchapter A,
 2-69 Chapter 2254.

3-1 Sec. 2261.007. CONTRACT GUIDELINES AND PROCEDURES. Each
3-2 state agency shall establish formal guidelines and procedures for
3-3 all employees involved in the contracting process:

- 3-4 (1) regarding who may approve a contract for the
- 3-5 agency;
- 3-6 (2) for contract planning and solicitation;
- 3-7 (3) for contract negotiations;
- 3-8 (4) for contract management; and
- 3-9 (5) for contract oversight.

3-10 SECTION 6. Subchapter B, Chapter 2261, Government Code, is
3-11 amended by adding Section 2261.054 to read as follows:

3-12 Sec. 2261.054. BEST VALUE STANDARD FOR CONTRACTING FOR
3-13 GOODS AND SERVICES. In determining the best value for the state,
3-14 the purchase price and whether the goods or services meet
3-15 specifications are the most important considerations. A state
3-16 agency may consider, subject to Sections 2155.074(c) and 2155.075,
3-17 other relevant factors, including:

- 3-18 (1) installation costs;
- 3-19 (2) life cycle costs;
- 3-20 (3) the quality and reliability of the goods and
- 3-21 services;
- 3-22 (4) the delivery terms;
- 3-23 (5) indicators of probable vendor performance under
- 3-24 the contract such as past vendor performance, the vendor's
- 3-25 financial resources and ability to perform, the vendor's experience
- 3-26 or demonstrated capability and responsibility, and the vendor's
- 3-27 ability to provide reliable maintenance agreements and support;
- 3-28 (6) the cost of any employee training associated with
- 3-29 a purchase;
- 3-30 (7) the effect of a purchase on agency productivity;
- 3-31 (8) the vendor's anticipated economic impact on the
- 3-32 state or a subdivision of the state, including potential tax
- 3-33 revenue and employment; and
- 3-34 (9) other factors relevant to determining the best
- 3-35 value for the state in the context of a particular purchase.

3-36 SECTION 7. The heading to Subchapter C, Chapter 2261,
3-37 Government Code, is amended to read as follows:

3-38 SUBCHAPTER C. CONTRACT FORMATION AND PROVISIONS

3-39 SECTION 8. Subchapter C, Chapter 2261, Government Code, is
3-40 amended by adding Sections 2261.103, 2261.104, 2261.105, 2261.106,
3-41 and 2261.107 to read as follows:

3-42 Sec. 2261.103. USE OF UNIFORM FORMS. A state agency may use
3-43 any forms developed by the comptroller as templates, guides, or
3-44 samples for contracts entered into by the agency.

3-45 Sec. 2261.104. ESSENTIAL CONTRACT PROVISIONS. The
3-46 following are required provisions in each contract to which the
3-47 provisions are applicable, other than a grant:

- 3-48 (1) legal authority;
- 3-49 (2) statement of work;
- 3-50 (3) indemnification or damage claims;
- 3-51 (4) consideration;
- 3-52 (5) specifications;
- 3-53 (6) funding out clause;
- 3-54 (7) antitrust;
- 3-55 (8) payment;
- 3-56 (9) dispute resolution;
- 3-57 (10) term of contract;
- 3-58 (11) confidential information;
- 3-59 (12) abandonment or default;
- 3-60 (13) right to audit;
- 3-61 (14) force majeure;
- 3-62 (15) independent contractor; and
- 3-63 (16) termination.

3-64 Sec. 2261.105. CONTRACT PROVISIONS REQUIRED BY STATE LAW.
3-65 In any contract for the acquisition of goods or services to which a
3-66 state agency is a party, a provision required by applicable law to
3-67 be included in the contract is considered to be a part of the
3-68 executed contract without regard to whether:

- 3-69 (1) the provision appears on the face of the contract;

4-1 or
4-2 (2) the contract includes any provision to the
4-3 contrary.

4-4 Sec. 2261.106. CONTRACT RENEWAL. A state agency shall
4-5 establish a standardized process for renewing all contracts of the
4-6 agency.

4-7 Sec. 2261.107. CONTRACT DURATION. (a) A state agency:
4-8 (1) must establish a reasonable term for a contract
4-9 before solicitation of the contract; and

4-10 (2) shall make an effort to keep the maximum length of
4-11 a contract to four years without reissuing a competitive
4-12 solicitation, including any contract renewals or extensions.

4-13 (b) A contract term established under Subsection (a)(1)
4-14 must be included in a solicitation document.

4-15 (c) A state agency may not enter into a contract that has an
4-16 indefinite term.

4-17 SECTION 9. Subchapter D, Chapter 2261, Government Code, is
4-18 amended by adding Section 2261.152 to read as follows:

4-19 Sec. 2261.152. CONTRACT PAYMENT. (a) For each contract
4-20 for goods or services that is subject to this chapter, a state
4-21 agency shall require that payment under the contract be linked to
4-22 clear and measurable achievements, such as length of time of work or
4-23 contract deliverables.

4-24 (b) A state agency may not make a final payment on a contract
4-25 for goods or services that is subject to this chapter unless the
4-26 agency verifies that all contract deliverables have been received.

4-27 SECTION 10. The heading to Subchapter E, Chapter 2261,
4-28 Government Code, is amended to read as follows:

4-29 SUBCHAPTER E. CONTRACT MONITORING AND ~~CONTRACTOR~~ OVERSIGHT

4-30 SECTION 11. Section 2261.202, Government Code, is amended
4-31 to read as follows:

4-32 Sec. 2261.202. CONTRACT MONITORING RESPONSIBILITIES.

4-33 (a) As one of its contract management policies, each state agency
4-34 that makes procurements to which this chapter applies shall
4-35 establish and adopt by rule a policy that clearly defines the
4-36 contract monitoring roles and responsibilities, if any, of agency
4-37 staff, including internal audit staff and other inspection,
4-38 investigative, or audit staff.

4-39 (b) The policy must establish clear lines of
4-40 accountability, staff roles and responsibilities, and
4-41 decision-making authority for program staff, contract management
4-42 staff, and executive management staff.

4-43 SECTION 12. Subchapter E, Chapter 2261, Government Code, is
4-44 amended by adding Sections 2261.204, 2261.205, 2261.206, 2261.207,
4-45 2261.208, 2261.209, 2261.210, 2261.211, 2261.212, 2261.213, and
4-46 2261.214 to read as follows:

4-47 Sec. 2261.204. INFORMATION ON CONTRACTOR PERFORMANCE.

4-48 (a) After a contract is completed or otherwise terminated, each
4-49 state agency shall review the contractor's performance under the
4-50 contract.

4-51 (b) Using forms made available to the state agency, a state
4-52 agency shall report to the comptroller on the results of the review
4-53 regarding a contractor's performance under a major contract.

4-54 (c) A state agency may use any vendor performance tracking
4-55 system available to state agencies to determine whether to award a
4-56 contract to a person reviewed in the database.

4-57 Sec. 2261.205. EXCLUDING CONTRACTOR FROM SOLICITATION

4-58 PROCESS. Based on its own contractor performance reviews and on
4-59 information in any vendor performance tracking system available to
4-60 state agencies, a state agency may exclude a contractor from the
4-61 solicitation process for a contract if the agency determines the
4-62 contractor has performed poorly on a previous state contract
4-63 without regard to whether the contractor has been barred under
4-64 Section 2155.077.

4-65 Sec. 2261.206. CONTRACTING STAFF. (a) Each state agency
4-66 that enters into contracts other than interagency contracts shall
4-67 establish a career ladder program for contract management in the
4-68 agency.

4-69 (b) An employee hired as a contract manager may participate

5-1 in procurement planning, contract solicitation, contract
 5-2 formation, price establishment, and other contract activities.

5-3 (c) Each state agency shall determine, in consultation with
 5-4 the state auditor, the amount and significance of contract
 5-5 management duties sufficient for an employee to be considered a
 5-6 contract manager, program staff, or a contract specialist.

5-7 Sec. 2261.207. APPROVAL OF CONTRACTS. (a) Each state
 5-8 agency shall adopt a policy to establish a monetary threshold above
 5-9 which agency contracts and amendments to or extensions of agency
 5-10 contracts require written authorization by the agency executive
 5-11 director.

5-12 (b) For state agency contracts valued in excess of \$1
 5-13 million, the agency executive director must authorize a contract
 5-14 amendment in writing.

5-15 (c) Each state agency shall annually report to the
 5-16 comptroller a list of persons authorized to approve contracts at
 5-17 the agency. The list must include each person's name, position, and
 5-18 supervisory responsibility, if any.

5-19 Sec. 2261.208. NEGOTIATION OF MAJOR CONTRACT BY SINGLE
 5-20 EMPLOYEE PROHIBITED. A state agency may not negotiate a major
 5-21 contract with only one employee engaging in the negotiation.

5-22 Sec. 2261.209. CONTRACT REVIEW; REPORTING. (a) A
 5-23 contractor's performance must be periodically reviewed throughout
 5-24 the term of a contract.

5-25 (b) A state agency shall ensure ongoing communication
 5-26 between executive management staff, contract management staff, and
 5-27 program staff of the results of the reviews performed under
 5-28 Subsection (a) with specific attention to contracts that are:

5-29 (1) anticipated to be completed later than originally
 5-30 estimated; or

5-31 (2) expected to cost more than the amount that was
 5-32 originally budgeted.

5-33 (c) To implement this section, a state agency shall create a
 5-34 system for agency-wide reporting on the status of, activity on, and
 5-35 contractor performance for each contract.

5-36 Sec. 2261.210. CONTRACT ADMINISTRATION TEAM. (a) This
 5-37 section applies to a state agency that has a contract with a value
 5-38 of \$5 million or more.

5-39 (b) A state agency to which this section applies shall
 5-40 create a contract administration team to:

5-41 (1) ensure and verify the performance of agency
 5-42 contracts with a value of \$5 million or more; and

5-43 (2) maintain within the agency contract oversight
 5-44 expertise to effectively manage contractors.

5-45 Sec. 2261.211. CONTRACT MONITORING PROCESS. A state agency
 5-46 shall establish and implement a monitoring process for agency
 5-47 contracts that includes:

5-48 (1) identifying the appropriate criteria for use in
 5-49 measuring contract performance;

5-50 (2) creating a schedule for monitoring contract
 5-51 performance;

5-52 (3) comparing work accomplished to work planned to be
 5-53 accomplished;

5-54 (4) analyzing contract performance variances; and

5-55 (5) addressing contracting performance problems with
 5-56 corrective action.

5-57 Sec. 2261.212. RISK MANAGEMENT PROCESS. (a) A state
 5-58 agency shall establish and implement a:

5-59 (1) process for evaluating the potential risk to the
 5-60 state, such as product risk, process risk, financial risk, and
 5-61 schedule risk, if contract implementation or performance problems
 5-62 occur, including a process for:

5-63 (A) risk identification or identifying items
 5-64 that may prevent the agency from achieving contracting goals or
 5-65 objectives;

5-66 (B) risk analysis or assessing the impact and
 5-67 likelihood of a risk;

5-68 (C) risk evaluation or developing strategies or
 5-69 approaches to address risks that have been identified and analyzed;

6-1 (D) risk treatment or the managerial approach to
6-2 risk;
6-3 (E) risk reduction or planning and performing
6-4 actions to mitigate risk due to a managerial decision to reduce
6-5 risk;
6-6 (F) contingency planning or developing plans for
6-7 corrective action to be taken if a potential risk occurs; and
6-8 (G) risk monitoring or tracking the
6-9 implementation of a risk reduction plan until the risk is
6-10 sufficiently mitigated; and
6-11 (2) procedure for corrective action to be used when
6-12 contract implementation or performance problems occur.
6-13 (b) In creating the process required by Subsection (a)(1),
6-14 the state agency shall consider:
6-15 (1) the complexity and subject matter of agency
6-16 contracts;
6-17 (2) the dollar value of agency contracts, including
6-18 contract extensions and amendments, and whether the procurement
6-19 will result in a major contract;
6-20 (3) the anticipated payment methodology;
6-21 (4) the experience of agency staff with the type of
6-22 procurement;
6-23 (5) whether the results of the procurement will impact
6-24 the public or only impact the agency;
6-25 (6) time constraints or the expected duration of the
6-26 procurement; and
6-27 (7) the type, availability, and experience of staff
6-28 resources required to implement the objectives of the procurement.
6-29 (c) Based on the assessed risk of a state agency contract,
6-30 the agency shall, for each contract:
6-31 (1) determine the appropriate frequency and method of
6-32 contract monitoring;
6-33 (2) allocate contract monitoring resources; and
6-34 (3) develop a contract auditing plan.
6-35 Sec. 2261.213. CONTRACT COMMUNICATION. (a) A state agency
6-36 shall maintain effective communication procedures regarding
6-37 contract performance.
6-38 (b) The chief financial officer of a state agency, or an
6-39 individual designated by the executive director with similar duties
6-40 and skills as a chief financial officer, shall report at least
6-41 monthly to the executive director on the status of agency
6-42 contracts. The report must include a clear indication of:
6-43 (1) any contract cost overruns or contracts that are
6-44 performing poorly; and
6-45 (2) contracts that may cause the state to delay or
6-46 default on service delivery.
6-47 Sec. 2261.214. REPORT ON CERTAIN PURCHASES. (a) Not later
6-48 than August 1 of each year, the comptroller shall publish a report
6-49 on the number and dollar value of sole source and emergency
6-50 purchases made in the previous calendar year. The report must
6-51 compare the total dollar value of all sole source and emergency
6-52 purchases made with the total dollar value of all competitively
6-53 awarded contracts.
6-54 (b) Each state agency shall timely provide to the
6-55 comptroller the information the comptroller requires for the
6-56 purpose of creating the report under Subsection (a).
6-57 (c) The comptroller shall establish requirements for the
6-58 provision of information under Subsection (b) in consultation with
6-59 the Contract Advisory Team created under Subchapter C, Chapter
6-60 2262, the Health and Human Services Commission, and the Texas
6-61 Department of Transportation.
6-62 (d) The comptroller may not require a state agency to
6-63 provide information under Subsection (b) on a contract related to
6-64 health and human services if:
6-65 (1) the value of the contract cannot be determined at
6-66 the time of execution of the contract; and
6-67 (2) any qualified vendor is eligible for the contract.
6-68 SECTION 13. Chapter 2261, Government Code, is amended by
6-69 adding Subchapters F, G, H, and I to read as follows:

SUBCHAPTER F. CHANGES TO CONTRACTS

7-1 Sec. 2261.251. CONTRACT AMENDMENTS, EXTENSIONS, AND CHANGE
 7-2 ORDERS. (a) An extension of or amendment to a state agency
 7-3 contract, including a change order, is subject to the same agency
 7-4 approval processes as the original contract.

7-5 (b) A state agency may not extend or amend a contract unless
 7-6 the agency complies with the same agency approval processes for the
 7-7 extension or amendment as required for the original contract and
 7-8 the agency states in writing why the extension or amendment is
 7-9 necessary or advantageous to the state.

7-10 (c) This section does not affect whether a state agency is
 7-11 required to undertake a new solicitation process in the manner
 7-12 required for a new contract in order to extend or amend a contract.

7-13 Sec. 2261.252. LARGE CHANGE IN CONTRACT VALUE; COST
 7-14 OVERRUNS. (a) If a proposed contract amendment or extension
 7-15 changes the monetary value of a major contract by at least 35
 7-16 percent or \$1 million, the state agency must submit the amendment or
 7-17 extension for review to the agency's executive director before the
 7-18 agency amends or extends the contract.

7-19 (b) Subsection (a) does not apply to a proposed contract
 7-20 amendment required by a state or federal statute.

7-21 (c) The executive director shall be timely notified of any
 7-22 unanticipated contract cost overrun.

7-23 Sec. 2261.253. CERTAIN CONTRACT EXTENSIONS. This
 7-24 subchapter does not apply to contract extensions that are
 7-25 specifically established as a component of the original
 7-26 procurement.

SUBCHAPTER G. TRAINING

7-27 Sec. 2261.301. TRAINING FOR CONTRACT MANAGERS. (a) A
 7-28 state agency shall require a contract manager to complete the
 7-29 training program for contract managers developed and administered
 7-30 by the comptroller.

7-31 (b) A state agency shall maintain a list of contract
 7-32 managers who have completed the training program for contract
 7-33 managers.

7-34 (c) A state agency may develop qualified contract manager
 7-35 training to supplement the training required under this section.

7-36 Sec. 2261.302. TRAINING FOR GOVERNING BODIES. All members
 7-37 of the governing body of a state agency shall complete at least one
 7-38 abbreviated course of the training program for contract managers
 7-39 developed and administered by the comptroller. This section does
 7-40 not apply to a state agency that does not enter into any contracts.

SUBCHAPTER H. CONTRACT PLANNING AND SOLICITATION

7-41 Sec. 2261.351. CONTRACT PLANNING. Before a state agency
 7-42 solicits a contract, the agency must:

7-43 (1) identify, justify, and document the need for the
 7-44 good or service;

7-45 (2) identify general contracting objectives,
 7-46 assumptions, and constraints;

7-47 (3) consider alternatives to soliciting the contract;
 7-48 and

7-49 (4) determine the preferred method of delivery for the
 7-50 good or service.

7-51 Sec. 2261.352. SOLICITATION OF CONTRACT. (a) A
 7-52 solicitation for a contract must include the following:

7-53 (1) a description of the work;

7-54 (2) a specific and measurable standard of performance;

7-55 (3) a list of the test conditions, method, or
 7-56 procedure for verifying that the contract deliverable meets the
 7-57 standard;

7-58 (4) a method or process to monitor and ensure quality
 7-59 in the contract deliverable;

7-60 (5) an acceptance process for each contract
 7-61 deliverable that is expected to be delivered;

7-62 (6) a compensation structure that is consistent with
 7-63 the type and value of work performed; and

7-64 (7) a remedy, if appropriate, for failure to meet
 7-65 contract deliverables.

7-66 (b) In preparing a contract solicitation, a state agency
 7-67
 7-68
 7-69

8-1 must include in the requirements for the contract deliverables:
8-2 (1) the quality level of the good or service;
8-3 (2) the amount of completion that is required;
8-4 (3) the suitability of the good or service for the work
8-5 to be done for the agency; and
8-6 (4) a defined and documented method of evaluation to
8-7 be used in making the award and in determining the best value bid
8-8 for the procurement.

8-9 SUBCHAPTER I. CONTRACT CLOSING

8-10 Sec. 2261.401. CLOSING PROCEDURE. A state agency shall
8-11 create and follow a procedure for contract closing that includes
8-12 procedures for:

- 8-13 (1) verification that all:
8-14 (A) required goods or services have been
8-15 delivered or performed, inspected, and accepted; and
8-16 (B) existing options have been exercised or have
8-17 expired;
8-18 (2) issuance of a contract completion notice by one
8-19 of the parties;
8-20 (3) acquisition of all required forms, reports, and
8-21 clearances;
8-22
8-23 (4) verification that other applicable terms have been
8-24 met;
8-25 (5) verification that there are no outstanding claims
8-26 or disputes; and
8-27 (6) final payment.

8-28 SECTION 14. Sections 2262.051(c) and (d), Government Code,
8-29 are amended to read as follows:

8-30 (c) The guide must provide required and recommended
8-31 contracting processes and procedures and information regarding the
8-32 primary duties of [a] contract management [manager], including how
8-33 to:

- 8-34 (1) develop and negotiate a contract;
8-35 (2) fairly and objectively select a contractor; [and]
8-36 (3) monitor contractor and subcontractor performance
8-37 under a contract and ensure compliance with provisions in a
8-38 contract that hold the contractor accountable for performance
8-39 results;
8-40 (4) develop an accurate and comprehensive statement of
8-41 work and conform contract documents to the statement of work;
8-42 (5) evaluate and ensure compliance with contract
8-43 deliverables and performance metrics and any associated remedies
8-44 and incentives;
8-45 (6) maintain required documentation for contracting
8-46 decisions, contract changes, and problems with a contract;
8-47 (7) communicate any serious issue or risk that is
8-48 identified with a contract in a timely manner to the agency's
8-49 governing body or the single state officer who governs the agency;
8-50 (8) create a risk management process under Section
8-51 2261.212;
8-52 (9) build and maintain a working relationship with the
8-53 contractor, including instruction on communication and timely
8-54 management of problems;
8-55 (10) create a procedure for selecting and applying a
8-56 preferred dispute resolution method;
8-57 (11) implement an escalation process to address
8-58 contract disagreements;
8-59 (12) evaluate and approve requests for payments that
8-60 are consistent with the contract; and
8-61 (13) develop a process for contract closure and
8-62 performance evaluation of a contractor under a contract.

8-63 (d) The guide must include model provisions for state agency
8-64 contracts. The guide must:

- 8-65 (1) distinguish between essential provisions that a
8-66 state agency must include in a contract to protect the interests of
8-67 this state and recommended provisions that a state agency may
8-68 include in a contract;
8-69 (2) recognize the unique contracting needs of an

9-1 individual state agency or program and provide procedures for
9-2 documenting agency decisions that do not follow required
9-3 contracting processes and procedures but are [~~sufficient~~
9-4 ~~flexibility to accommodate those needs,~~] consistent with
9-5 protecting the interests of this state;

9-6 (3) include maximum contract periods under which a new
9-7 competitive solicitation is not necessary; and

9-8 (4) include the model contract management process
9-9 developed under Section 2262.104 and recommendations on the
9-10 appropriate use of the model.

9-11 SECTION 15. Sections 2261.104, 2261.105, 2261.107,
9-12 2261.208, 2261.351, and 2261.352, Government Code, as added by this
9-13 Act, apply only to a contract for which a state agency first
9-14 advertises or otherwise solicits bids, proposals, offers, or
9-15 qualifications on or after the effective date of this Act.

9-16 SECTION 16. A contract manager is not required to complete
9-17 the training required under Section 2261.301, Government Code, as
9-18 added by this Act, until September 1, 2017.

9-19 SECTION 17. A member of a governing body of a state agency
9-20 is not required to complete the training required under Section
9-21 2261.302, Government Code, as added by this Act, until September 1,
9-22 2017.

9-23 SECTION 18. A state agency is not required to comply with
9-24 Section 2261.202, Government Code, as amended by this Act, and
9-25 Section 2261.004 and Sections 2261.204 through 2261.213,
9-26 Government Code, as added by this Act, until September 1, 2017.

9-27 SECTION 19. This Act takes effect November 1, 2015.

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